

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**ECF  
13 Civ. 8395 (ALC)**

**ASTRA OIL COMPANY LLC,**  
  
**Petitioner,**  
**- against -**  
  
**HYDRO SYNTEC CHEMICALS INC.,**  
  
**Respondent.**

**ATTORNEY REPLY DECLARATION**

JAMES M. TEXTOR, declares that the following declaration is true and complete:

1. I am the attorney of record representing the Petitioner, Astra Oil Company LLC ("Astra") in the legal proceedings associated with the Astra Order to Show Cause to confirm a Final Arbitration Award, dated November 21, 2013.
2. I am a member of the firm of Messrs. Cichanowicz, Callan, Keane, Vengrow & Textor, LLP and I am admitted to practice in the Second Circuit Court of Appeals and the Southern District of New York.
3. In support of the Petitioner's Order to Show Cause and with reference to the hearings on January 17<sup>th</sup> and 24, 2014, I offer certain documents as identified exhibits and proposed undisputed facts.

**PRELIMINARY STATEMENT**

4. Hydro-Syntec Chemicals Inc. ("HSC") challenges the confirmation of the Final Award alleging that HSC never acknowledged receipt the Astra/HSC sales contract, dated October 22, 2012 and that the sales contract was not signed.
5. In response, Astra alleges that the sales contract as emailed was received by HSC as there was no indication that the email either failed or was undeliverable. Based on oil trading practice,

petroleum sales contracts are never signed and as per Contract Clause No. 4, there were extensive emails between the parties confirming a bookout.

6. As per the second hearing on January 24, 2014, HSC does not challenge the arbitration proceedings. The only challenge is to the existence of the agreement to arbitrate.

## **DOCUMENTS**

7. For my affidavit, I will refer to certain documents as exhibits as follows:

1. Astra/Operations email to Hydro/ Kevin Callahan dated October 22, 2012 at 1837 with attached Astra Agreement for Sale and Purchase of Benzene dated October 22, 2012, Astra Contract No. 848856-4873 (this document is attached to the Astra Petition as Exhibit B. The subject attached document is more legible.)
2. Astra/Farmer email to Hydro/Callahan, Subject: Bookout Confirmation/ Astra Ref. 63036/84856, dated October 22, 2012 at 1855.
3. Hydro/Callahan response email to Astra/Farmer, Subject: Bookout Confirmation/ Astra Ref: 63088/84856, dated October 23, 2012 at 0820, Astra/Farmer response email to Hydro/Callahan, Subject: Bookout Confirmation dated October 23<sup>rd</sup> at 0735 (Pacific Time), and Hydro/Callahan response email to Astra/Farmer, Subject: Bookout Confirmation Astra Ref: 63038/84856, dated October 23, 2012 at 0822.
4. Astra/Shaw email to Hydro/Kevin Callahan Subject: Book Transfer, dated October 22, 2012 at 1638 and Hydro/ Kevin Callahan response email to Astra/Shaw, Subject: Book Transfer, dated October 23, 2012 at 1525.
5. Hydro/Callahan email to Astra/Shaw, Subject: Book Transfer, dated October 23, 2012 at 0625, Astra/Shaw email to Hydro, dated October 23<sup>rd</sup> at 0958, Hydro/Callahan email to Astra/Shaw and Hydro/Wong, dated October 23<sup>rd</sup> at 1018, and Astra/Shaw email to Hydro/Callahan, dated October 23<sup>rd</sup> at 1859.
6. Hydro/Callahan email to Astra/Shaw, Subject: Book Transfer dated October 23<sup>rd</sup> at 1018, Astra/LaMont email to Hydro/Callahan, Hydro/Wong, dated October 23<sup>rd</sup> at 1050 and Astra/LaMont email to Hydro/Callahan and Hydro/Wong, dated October 26<sup>th</sup> at 1258.

7. Astra/Zmuidzinas email to Hydro/Callahan and Hydro/Wong, subject: Astra invoice 40527, dated November 1, 2012 at 1416 and attached Astra invoice to Hydro.
8. Hydro/Wong email to Hydro/Callahan, Subject: Astra Parcel Buyback, dated October 31, 2012 at 1822, as forwarded by Hydro/Callahan to Astra/Walker, Hydro/Wong and Hydro/Tsang, subject: Astra Parcel Buyback, dated November 1, 2012 at 1836.
9. Astra/Reyes email to Hydro/Callahan and Hydro/Wong, Subject: Astra Invoice No. 40527, dated November 5, 2012.
10. Astra/Reyes emails to Hydro/Callahan and Hydro/Wong, dated November 5<sup>th</sup> dated 6, 2012, Subject: Astra invoice No. 40527.
11. Hydro/Wong email to Astra/Walker copied to Hydro/Callahan and Hydro/Tsang Subject: Astra Parcel Buyback, dated November 8, 2012 at 2014.
12. Hydro/Callahan email to Hydro/Wong and Astra/Shaw, Subject: Book Transfer, dated November 9, 2012 and attached Hydro invoice to Astra dated November 9, 2012, invoice no. 1033, Description: Benzene September Benzene via book transfer on October 26, 2012.
13. Hydro/Callahan email to Hydro/Wong and Astra/Walker, copied to Hydro/Tsang, dated November 14, 2012, Subject: Astra Parcel Buyback.
14. Hydro/Callahan email to Hydro/Wong and Astra/Shaw copied to Astra/Walker, Subject: Payment Status, dated November 15, 2012, and Astra/Shaw email to Hydro/Callahan and Hydro/Wong, dated November 17, 2012.
15. Hydro/Callahan email to Hydro/Wong and Hydro/Tsang, copied to Astra/Walker, Subject: Payment Status, dated November 19, 2012.
16. Hydro/Callahan email to Hydro/Wong copied to Hydro/Tsang and Astra/Shaw, Subject: Astra Parcel Buyback, dated November 26, 2012.
17. Hydro/Tsang emails to Hydro/Wong, Hydro/Callahan and Astra/Shaw, Subject: Payment Status, dated November 30<sup>th</sup> and December 7, 2012.
18. Astra/Walker email to Astra/Haller and Astra/Shaw, Subject: Hydro, dated December 12, 2012.
19. Hydro/Callahan email to Hydro/Wong and Astra/Walker copied to Hydro/Tsang and Astra/Shaw, Subject: Astra Parcel Buyback, dated January 2, 2013.

20. Messrs. Stutman, Treister Glatt email to Hydro/Tsang, Wong and Callahan and attached demand Letter, dated January 20, 2013.
8. For the arbitration proceedings, I served all the above identified documents to the Panel and to Hydro's Colorado attorney. Some of these documents are referenced in the Final Award, dated November 21, 2013.

### **PROPOSED UNDISPUTED FACTS**

9. Astra Oil Company ("Astra") and HSC are Houston based petroleum companies. For the subject dispute, the Astra trader is Mr. Clay Walker and the HSC trader is Mr. Kevin Callahan. The Astra California based contract administrators and financial personnel are Ms. Debbie Farmer and Ms. Kristi Shaw. Due to the very small size of HSC, there are no contract administration personnel, Mr. Callahan is the only chemical trader and on information and belief, Mr. Callahan is responsible for petroleum sales contract administration/review.
10. On September 7, 2012, HSC as seller and Astra as buyer entered into a sales contract for 20,000 bbls. of bulk benzene at a fixed price of \$4.16/gal. Contract Clause No. 2 provided in part that "in the event of a bookout, inventory transfer document shall be the quantity document of record. Copy of the September 7<sup>th</sup> sales contract is attached to attorney for HSC letter to the Court, dated January 24, 2014.
11. The September 7<sup>th</sup> sales contract number is 63038-4873.
12. Although Contract Clause No. 13 entitled "Law and Arbitration", the contract does not contain the standard Astra arbitration clause.
13. On October 22, 2012, Astra by Mr. Walker and HSC by Mr. Callahan, agreed a benzene sales contract for 20,000 bbls. at an agreed price of \$5.35/gal. The contract at Payment Clause No. 9 requires payment within fifteen (15) days by wire transfer.

14. The October 22nd contract at Clause No. 4 provides that “in the event of a bookout, inventory transfer document shall be the quantity document of record”.

15. Contract Clause No. 16 entitled “Law and Arbitration” contains the standard Astra arbitration clause. This clause is cited in full in the Astra Petition, Par No. 2, dated November 25, 2013.

16. On October 22, 2012, Astra by Ms. Debbie Farmer issued an email to HSC attention Mr. Callahan with the attached contract dated October 22<sup>nd</sup> and confirming the Astra contract numbers 84856-4873. There was no indication that the Astra email failed or was undeliverable. Copies of the Astra/Farmer email to HSC/Callahan, dated October 22<sup>nd</sup> and attached benzene sales contract dated October 22, 2012, are attached as Exhibit No. 1.

17. After submission the second sales contract, the traders agreed to a bookout in accordance with contract Clause No. 4. Therefore, on October 22<sup>nd</sup>, Ms. Farmer issued an email to Mr. Callahan confirming the bookout for 840,000 gal., which is equivalent to 20,000 bbls (42 gallons is equivalent to 1 bbl.). The effective date of the bookout is October 23<sup>rd</sup>. The parties’ portion states “Astra/Hydro-Syntec/Astra”. Ms. Farmer’s email Subject states “bookout confirmation/Astra Ref: 63038/84856.” Copy of the Astra/Farmer email to Mr. Callahan, dated October 22<sup>nd</sup> is attached as Exhibit No. 2.

18. In response to the Astra/Farmer email dated October 22<sup>nd</sup>, Mr. Callahan on October 23<sup>rd</sup> at 0828 issued a response email to the Astra/Farmer bookout email dated October 22<sup>nd</sup> which states, as follows:

Hi Debbie,

Sorry for the delayed response. I am Ok with the book, but if I may suggest the effective date the 26<sup>th</sup>. Let me know if you are OK with the date.

Thanks

Kevin

19. On October 23<sup>rd</sup> at 0735 (Pacific Time), Ms. Farmer issued a response email to Mr. Callahan which states, as follows:

Hi Kevin,  
Effective the 26<sup>th</sup> is fine with us.  
Best regards,  
Debbie

20. On October 23<sup>rd</sup> at 0822 (Houston time), Mr. Callahan issued a response email to Ms Farmer, Subject bookout confirmation/Astra Ref: 63038/84856 which states that "Great Thanks Debbie." Copies of the Astra/Farmer and HSC / Callahan emails dated October 22<sup>nd</sup> and October 23, 2012, are attached as Exhibit No. 3.

21. On October 22<sup>nd</sup> at 1638 (Pacific Time), Astra by Ms. Kristi Shaw, who is the Astra Los Angeles based financial controller responsible for contract payment issued an email to Mr. Callahan conveying the Astra wire transfer details and the email also states, as follows:

Kevin,

I am not sure if you are the person I need to talk to regarding credit or not. It appears that we have a book transfer that we have agreed to netout with 15 days payment terms from 10/22/2012. Astra Oil Company LLC is due \$999,600.00 on November 6, 2012. We will need you to promptly pay the amount or post us an LC for the difference of the netout amount of \$999,600.00? Please let us know which you prefer to do.

If you choose to post and LC please advise to:

**Our Advising Bank detail:**  
BNP Paribas  
Newport Tower – Suite 188  
525 Washington Boulevard  
Jersey City, NJ 07310

22. In response, on October 23<sup>rd</sup> at 1525, Mr. Callahan issued an email to Ms. Shaw Subject: Book Transfer which states, as follows:

Hi Kristi,

I have copied Mr. Sam Wong in our finance dept. He will handle the L/C and coordinate with you.

If you need anything else, please let me know.

Thanks,

Kevin

Copies of the Astra/Shaw email dated October 22<sup>nd</sup> and HSC / Callahan email dated October 23, 2012 are attached as Exhibit No. 4.

23. At this time, for the payment of the bookout in the amount of \$999,600., Mr. Callahan accepted the Astra offer for payment by posting a letter of credit to the benefit of Astra. As Mr. Callahan is a trader, he confirmed conveying the Astra bookout amount and payment agreement to the HSC financial department which apparently is Mr. Sam Wong. Also, at this time, Mr. Callahan did not challenge the bookout nor the bookout amount in favor of Astra which price is based on the differential between the two(2) contract prices (\$4.16/gal. and \$5.35/gal.) and the agreed quantum of benzene in the amount of 20,000 bbls./840,000 gal. The bookout is simply an administrative matter and contrary to the HSC contentions, is not a separate contract.

24. On October 23<sup>rd</sup> at 1018, in response to a request by Ms. Shaw for Mr. Wong's contact information, on October 23<sup>rd</sup> at 1018, Mr. Callahan issued an email to Ms. Shaw and to Mr. Sam Wong which states as, follows:

Hi Kristi,

Yes, sure. I have copied Sam in on the email as well. Believe he has dealt with Melody in the past.

Anyway email: S.Wong at Hydro Syntec.com, phone: (732) 991-9823.

Let me know if you need anything else.

Thanks, Kevin.

Copies of the Astra/Shaw email, dated October 23<sup>rd</sup> and HSC/Callahan email to Ms. Shaw and to Mr. Sam Wong, dated October 23, 2012, are attached as Exhibit No. 5.

25. In response to the Mr. Callahan email dated October 23<sup>rd</sup>, Astra by Ms. Melody LaMont who is a Astra Los Angeles based financial employee, issued an email to Mr. Callahan and to Mr. Wong, dated

October 23<sup>rd</sup> Subject: Book transfer asking Mr. Wong if he intended to “use HSBC as the issuing bank for this book?” Copy of the Astra/LaMont email, dated October 23, 2012 is attached as Exhibit No. 6.

26. On November 1<sup>st</sup>, Astra by Ms. Zmuidzinis issued an email to Mr. Callahan and to Mr. Wong attaching the Astra barge: book transfer invoice to HSC, dated October 31, 2012, in the mount of \$999,600.00. The invoice reflects the agreed quantum of 20,000 bbls. of benzene and contains an accounting based on the agreed prices for the first and second contracts to the benefit of Astra. Copy of Ms. Zmuidzinis email to Mr. Callahan and Mr. Wong with the attached Astra bookout invoice, are attached as Exhibit No. 7.

27. On November 1<sup>st</sup>, Mr. Callahan issued an email to Mr. Walker, Mr. Wong and Mr. D. Tsang Subject: Astra Parcel Buyback in which Mr. Callahan forwarded to Mr. Walker an email by Mr. Wong to Mr. Callahan, dated October 31, 2012. The Mr. Sam Wong email states as follows:

Dear Kevin,

Please forward on to your colleagues at Astra.

Dear All,

I apologize for not getting back sooner. I have been dealing with the aftermath of someone close to me passing away.

Furthermore, I have been in touch with my colleagues in Asia to resolve the difficulties with this particular trade. The plan is to have something substantive by the beginning of this coming week or sooner.

Best regards, Sam

Copy the HSC/Callahan email, dated November 1, 2012 forwarding the HSC/Sam Wong email to Mr. Callahan, dated October 31, 2012, are attached as Exhibit No. 8.

28. On November 5<sup>th</sup> and November 6<sup>th</sup>, Astra issued emails to Mr. Callahan and Mr. Wong requesting confirmation for the payment of the Astra bookout invoice no. 40527 which was due for



payment on Nov. 5<sup>th</sup>. Copies of the Astra emails dated November 5<sup>th</sup> and 6, 2012 are attached as Exhibit Nos. 9 and 10, respectively.

29. In response to Mr. Clay Walker email to HSC dated on November 5<sup>th</sup>, Mr. Sam Wong issued an email to Mr. Walker copy to Mr. Callahan and Mr. Tsang, dated November 8th, which states, as follows:

Dear All,

I met with HSBC yesterday and the LC Application is in process and am awaiting their reply.

Regards, Sam

Copy of HSC/Wong email, dated November 8, 2012 is attached as Exhibit No. 11. As of this date, HSC did not challenge the Astra bookout invoice.

30. On November 9<sup>th</sup>, Mr. Callahan issued an email to Mr. Wong and to Ms. Shaw at Astra, Subject: Book Transfer, attaching the HSC invoice to Astra dated November 9, 2012. The Callahan email is in response to the Kristi Shaw email dated November 8<sup>th</sup> requesting a copy of the HSC invoice in order to close the Astra books. Copies of the Astra/Shaw email dated November 8<sup>th</sup> and HSC/Callahan email dated November 9<sup>th</sup> with attached HSC invoice, are attached as Exhibit No. 12. The HSC invoice in the Description portion of the invoice specifically states, as follows:

Benzene September Benzene via Book Transfer on 10/26/12.

31. In response to an Astra/Walker email to HSC, dated November 13<sup>th</sup> requesting payment status, on November 14<sup>th</sup>, Mr. Callahan issued an email to Mr. Sam Wong and Mr. David Tsang which states, as follows:

Hi David,

I just wanted to follow up on our earlier discussion. Can we give Astra an update on the status of payment or more importantly some clarity to the situation.

Thanks for your help.

Regards, Kevin

32. On November 26<sup>th</sup>, Mr. Callahan issued an email to Mr. Sam Wong and Mr. Clay Walker with copy to Mr. David Tsang and Ms. Kristi Shaw, Subject: Parcel Buyback, forwarding his November 14<sup>th</sup> email.

The November 26<sup>th</sup> email states as follows:

Sam/David,

Can you please let us know where we stand on the AOT payment. We really need to provide some feedback. Sam, per your last email, they are still waiting for something of substance. Please let them know where we are at this period.

Kevin.

Copies of the HSC/Callahan emails, dated November 14<sup>th</sup> and November 26<sup>th</sup>, 2012 are attached as Exhibit No. 13.

33. On November 17<sup>th</sup>, as Astra had not received payment, the Astra controller, Ms. Kristi Shaw issued an email to Kevin Callahan and Mr. Sam Wong, which states as follows:

Kevin,

We still have not received any information. If we can't get an accurate response we will be forced to look at other alternatives such as legal action. We really would like to work out a solution with you but since we are getting no accurate information you are not leaving us many alternatives. If I do not receive information or a p[h]one call so discuss by Monday 11-19-2012 we will start looking at other alternatives.

Regards,

Kristi Shaw

Copy of the Astra/Shaw email to HSC/Callahan and HSC/Wong, dated November 17, 2012, is attached as Exhibit No. 14.

34. On November 19<sup>th</sup>, in response to the Astra/Shaw email, dated November 16<sup>th</sup>, Mr. Callahan issued an email to Mr. Wong, Mr. Tsang and Ms. Shaw as copied to Clay Walker which states, as follows:

David/Sam,

Can we please provide some information to Astra today... they have been extremely patient as you know. Please see their message below.

Thanks, Kevin

Copy of the HSC/Callahan email, dated November 19, 2012, attached as Exhibit No. 15.

35. On November 26<sup>th</sup>, Mr. Callahan issued an email to Mr. Wong and Mr. Walker with copy to Mr. Tsang and Ms. Shaw which states as follows:

Can you please let us know where we stand on the AOT payment. We really need to provide some feedback. Sam, per your last email, they are still waiting for something of substance. Please let them know where we are at this point.

Copy of HSC/Callahan email to Sam Wong and Clay Walker, copied to David Tsang and Ms. Shaw dated November 26, 2012, is attached as Exhibit No. 16.

36. On November 30<sup>th</sup>, HSC by Mr. David Tsang issued an email to Mr. Sam Wong, Mr. Kevin Callahan and Ms. Kristi Shaw, Subject: Payment Status, which states, as follows:

Dear Kristi,

I apologize for the delay in responding.

We are aware of the situation that we have in front of us.

We are in negotiations with our bankers to work out a solution which will satisfy both companies.

As soon as I receive details, we will forward such information to you right away.

37. In response to the Astra/Shaw email, dated December 6<sup>th</sup> requesting prompt payment of the overdue bookout amount, on December 7<sup>th</sup>, HSC by Mr. David Tsang issued an email to Ms. Shaw copied to Mr. Callahan Subject: Payment Status, which states, as follows:

Dear Kristi,

We are working on some options with our bank to issue a payment plan with LC to Astra.

It's taken longer than expected. But, I will advise as soon as I receive confirmation.

Copies of the HSC/David Tsang emails, dated November 30<sup>th</sup> and December 7, 2012, are attached as Exhibit No. 17.

38. On December 12, 2012, Mr. Walker issued an internal Astra email, Subject: Hydro-Syntec, which states, as follows:

The Trader from Hydro-Syntec told me today they are planning on putting together a payment plan over a three month period to be secured by and LC. They are waiting on for the details from their Asia office in order to submit for our approval. He says they hope to have it to us by early next week.

I am not saying I would bet my house that they would come thru, but it sounds better than it did yesterday.

I will keep you advised.

Copy of the Astra/Walker email, dated December 12, 2012 is attached as Exhibit No. 18. The reference to the HSC trader is Mr. Callahan.

39. On January 2, 2013, Mr. Callahan at HSC issued an email to Mr. Wong and Mr. Walker copied to Mr. David Tsang and Ms. Kristi Shaw which states, as follows:

Good morning David,

Now that the holidays are over, can we get an update from AOT on where we stand?

As we close out the year, I am sure they are eager to get things settled or at least moving forward.

You had mentioned a plan was being put in place to offer a payment plan, can you perhaps now provide some details for the customer?

Copy of the HSC/Callahan email, dated January 2, 2013, is attached as Exhibit No. 19.

40. On January 25, 2013, Mr. Resler of Messrs. Stutman, Treister & Glatt of Los Angeles representing Astra issued an email to HSC attaching a letter demanding payment of the agreed and outstanding bookout in the amount of \$999,600.00. Copy of the Mr. Resler email to HSC and attached letter dated January 25, 2013, are attached as Exhibit No. 20.

41. Based on the above emails, especially the emails of the HSC trader, Mr. Callahan and HSC emails of Mr. Sam Wong and Mr. David Tsang, at no time did HSC ever challenge the contract dated October 22, 2012 and bookout including the price differential between the two (2) contracts. The second contract contains a very broad arbitration clause.

42. After Astra issued the second contract on October 22, 2012 containing the payment requirement for a wire transfer within fifteen (15) days of the agreed delayed bookout date on October 26<sup>th</sup>, HSC never challenged the October 22<sup>nd</sup> sales contract. Astra offered to HSC the option to pay by letter of credit which HSC by Mr. Sam Wong and Mr. David Tsang accepted. HSC never established the letter of credit. Astra then commenced arbitration proceedings in accordance with sales contract Clause No. 16.

42. HSC does not challenge the arbitration proceedings.

Dated: New York, New York  
January 27, 2014

By:

  
JAMES M. TEXTOR